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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/761,661
First Named Inventor : Patrick BACHINGER
Filed : January 18, 2001
Senior Petitions :
Attorney : Douglas I. Wood
Docket No. : 1748X/49451
Customer No. : 23911

Title : CATALYTIC REACTOR

RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)

Mail Stop PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This renewed petition is filed in response to the decision mailed February 17, 2005, dismissing the petition under 37 C.F.R. § 1.137(b) filed October 13, 2004, and following the telephone discussion with Senior Petitions Attorney Wood on April 15, 2005. For reasons set forth during the discussion on April 15, 2005, and reiterated below, reconsideration of the decision is respectfully requested.

Initially, petitioner Ballard Power Systems AG ("Ballard") is not, in fact, asserting that any "delay was unintentional due to petitioner Ballard's financial condition" as is set forth in the first full paragraph on page 3 of the decision. As the decision correctly notes in the paragraph spanning pages 1-2 thereof, instructions were provided to Ballard's outside patent counsel to allow U.S. Patent application serial no. 09/761,661 to become abandoned. These instructions, however, were sent (1) contrary to the company's policy and intention regarding U.S. Patent application serial no. 09/761,661 (Declaration of Kerry B. Hillier ("Declaration"), paragraph 9), (2) without knowledge of Ballard's determination to preserve any patent applications relating to the divestiture

mentioned in Declaration paragraphs 2 and 3 (Declaration paragraph 8), and (3) prior to the time that the Declaration signatory, Mr. Hillier, assumed his current position of Manager, Intellectual Property, after which time Mr. Hillier first learned of the existence of negotiations relating to the divestiture mentioned (Declaration paragraph 7).

The *In re Application of G* case cited on both page 3 and page 4 of the decision involved circumstances in which the record clearly established that the applicants and their assignee deliberately allowed the application at issue to become abandoned. *In re Application of G*, 11 USPQ2d 1378, 1380 (Commissioner of Patents 1989). Such circumstances are not present here. The statements set forth in the Declaration compel a conclusion that U.S. Patent application serial no. 09/761,661, which forms the subject matter of the present renewed petition, lapsed because Mr. Hillier was unaware of either the negotiations or the decision to preserve assets relating to fuel cell system development and production technology referred to in paragraph 3 of the Declaration. The abandonment of U.S. Patent application serial no. 09/761,661 thus does not involve circumstances in which the applicants or any assignee deliberately allowed the application at issue to become abandoned. In fact, as is clear from paragraphs 3 and 6 of the Declaration, exactly the opposite is true: assignee Ballard had decided to refrain from allowing patent applications relating to fuel cell system development and production technology, including present U.S. Patent application serial no. 09/761,661, to become abandoned. The circumstances surrounding abandonment of U.S. Patent application serial no. 09/761,661 are thus completely different from the circumstances surrounding the application at issue in the *In re Application of G* case.

It is respectfully submitted that the Declaration of Kerry B. Hillier, as submitted on October 13, 2004, is in fact sufficient to establish that the delay referred to in the decision mailed February 17, 2005, was an unintentional delay within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b), and

reconsideration of the decision mailed February 17, 2005, is again respectfully requested.

If there are any questions regarding this renewed petition or the application in general, a telephone call to the undersigned would be appreciated.

If necessary to effect a timely response, this paper should be considered as a petition for an extension of time sufficient to effect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #011210.49451).

Respectfully submitted,

Date: April 20, 2005



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